

**351.120 Issuance of certificates -- Form and content -- Classification -- Duty of applicant -- Drug- or alcohol-test-related suspension or revocation of certification or license -- Notification of options -- Reissuance after evaluation, treatment, and testing.**

- (1) The commissioner shall issue a certificate to each person who possesses the qualifications required by law for mine inspector, electrical inspector, surface or underground mine safety instructor, surface mine safety analyst, assistant mine foreman, mine foreman, shotfirer, and other mining specialties as established by the board, or miner who has passed the examination given by direction of the board for that position, and who has met the requirements for drug- and alcohol-free status.
- (2) The certificate shall be in such form as the commissioner prescribes, shall be signed by the commissioner, and shall show that the holder has passed the required examination and possesses the qualifications required by law for mine inspector, electrical inspector, surface or underground mine safety instructor, surface mine safety analyst, assistant mine foreman, mine foreman, shotfirer, and other mining specialties as established by the board, or miner and is authorized to act as such.
- (3) Certificates issued to mine foremen and assistant mine foremen shall be classified as follows:
  - (a) Mine foreman certificates, authorizing the holder to act as foreman for all classes of coal mines; and
  - (b) Assistant mine foreman certificates, authorizing the holder to act as assistant foreman.
- (4) Any mine foreman or assistant mine foreman may act as a fire boss or mine examiner. This shall not apply to persons holding a second class mine foreman certificate issued before June 16, 1972.
- (5) The class of mine foreman's certificate awarded shall be determined by the board according to the experience of the applicant.
- (6) No certificate shall be granted to any person who does not present to the board satisfactory evidence, in the form of affidavits, that the applicant has had the required practical experience in underground or surface coal mines. A data sheet shall be filed by each applicant showing places of employment, beginning month and year and ending month and year employed by each company and list jobs performed, showing at least the number of required years. Affidavit and data sheet forms shall be furnished by the department. The applicant also shall submit proof that he or she is drug and alcohol free. The proof shall be submitted in accordance with KRS 351.182 and 351.183. For the purpose of this section, persons holding a four (4) year degree in mining engineering from a recognized institution shall be credited with the equivalent of two (2) years of practical experience in coal mines when applying for any mine foreman or assistant mine foreman certificate. Persons holding an associate degree in mining from a recognized institution shall be credited with the equivalent of two (2) years' experience when applying for a mine foreman certificate and one (1) year when applying for an assistant mine foreman certificate. Persons desiring to use their mining engineering or mining technology degree as credit for practical experience toward a mine foreman or

assistant mine foreman certificate shall file proof of having received their degree prior to the examination.

- (7) Applicants for an underground mine foreman certificate shall have five (5) years' practical underground coal mining experience acquired after achieving the age of eighteen (18), with at least one (1) year of this experience acquired on an active working section of an underground mine. Applicants for an underground assistant mine foreman certificate shall have three (3) years' practical underground experience acquired after achieving the age of eighteen (18), with at least one (1) year of this experience acquired on an active working section of an underground mine.
- (8) Applicants for surface mine foremen certification shall have three (3) years' practical surface mine experience acquired after achieving the age of eighteen (18); for surface mine foreman certification with a specialty in coal extraction, at least one (1) year of the required practical experience shall have been acquired from direct involvement in the mining or extraction of coal at a surface mine. For a surface mine foreman certification with a specialty in postmining activities, at least one (1) year of the required experience shall have been acquired from direct involvement in the performance of such activities at a surface or underground mine, coal preparation plant, or other coal-handling facility. Notwithstanding any requirement in this subsection to the contrary, a person having three (3) years' of underground or surface mining experience shall qualify for a surface mine foreman certification with a specialty in postmining activities if the person has documented experience of at least one (1) year in the performance of these activities. Persons holding a surface mine foreman certificate prior to July 15, 1998, are not affected by this section.
- (9) Persons possessing certificates of qualifications to act as mine inspector, mine foreman, assistant mine foreman, or fire boss prior to July 15, 1982, are not affected by this section.
- (10) When approved by the commissioner, a person who has successfully completed any mine foreman or assistant mine foreman examination and submitted proof that he or she is drug and alcohol free in accordance with KRS 351.182 and 351.183 may be granted a temporary certification that is valid only until the board acts upon his or her certification at its next regularly scheduled meeting.
- (11) A member of the supervisory personnel shall be present at the working section except in cases of emergencies at all times employees under his supervision are at the working section on coal-producing shifts.
- (12) The commissioner immediately shall suspend any certification for violation of drug- and alcohol-free status or for failure or refusal to submit to a drug and alcohol test authorized by KRS 351.182, 351.183, 351.184, 351.185, and 352.180. The commissioner shall, by certified mail, notify the holder of the certification of his or her suspension and of the following:
  - (a) The right to pursue one (1) of the following options:
    1. Appeal the suspension to the Mine Safety Review Commission within thirty (30) days of the notification; or
    2. Notify the commissioner of the Department for Natural Resources or the executive director of the Office of Mine Safety and Licensing

within thirty (30) days of the notification that the holder intends to be evaluated by a medical professional trained in substance treatment, to complete any prescribed treatment, and to submit an acceptable result from a drug and alcohol test as required by KRS 351.182;

- (b) Failure to file an appeal or failure to notify the commissioner of the Department for Natural Resources or the executive director of the Office of Mine Safety and Licensing of the holder's intent to comply with paragraph (a)2. of this subsection within thirty (30) days of the notification shall result in the revocation of all licenses and certifications issued by the Office of Mine Safety and Licensing for a period of not less than three (3) years, and the holder shall remain ineligible for any other certification issued by the Office of Mine Safety and Licensing during the revocation period. Certifications and licenses revoked under this paragraph may be reissued by:
    - 1. Compliance with all training and testing requirements;
    - 2. Satisfying the requirements of KRS 351.182 and 351.183; and
    - 3. Compliance with all orders of the Mine Safety Review Commission; and
  - (c) The completion of the evaluation, treatment, and submission of an acceptable drug test pursuant to paragraph (a)2. of this subsection or the revocation described under paragraph (b) of this subsection shall be considered a first offense.
- (13) The licenses and certifications of a miner who notifies the commissioner of the Department for Natural Resources or the executive director of the Office of Mine Safety and Licensing of his or her intent to comply with subsection (12)(a)2. of this section shall remain suspended until the miner has provided proof of the evaluation and successful completion of any prescribed treatment and has submitted a negative drug and alcohol test as required by KRS 351.182 to the Office of Mine Safety and Licensing. The drug and alcohol test shall be taken no more than thirty (30) days prior to the submission of the proof required by this section. Upon receipt and review of the proof by the Office of Mine Safety and Licensing, the miner's licenses and certifications shall be restored. In the event that the miner fails to successfully complete the evaluation, treatment, and drug test within one hundred twenty (120) days of his or her notification pursuant to subsection (12)(a)2. of this section, the miner's licenses and certifications issued by the Office of Mine Safety and Licensing shall be revoked for a period prescribed under KRS 351.990(8). The one hundred twenty (120) day time period set out in this section shall be extended upon proof that the miner is complying with the recommendations of the medical professional.
- (14) If the suspension described in subsection (12) of this section occurs following the miner's first offense as described in this section or KRS 351.184, the notification sent to the miner shall not include the option of notifying the Office of Mine Safety and Licensing of the miner's intent to seek an evaluation and treatment. The miner shall only have the right to appeal the suspension to the Mine Safety Review Commission within thirty (30) days of notification. If the miner fails to appeal the suspension, the penalty shall be assessed according

to KRS 351.990(8)(b) or (c).

**Effective:** July 12, 2012

**History:** Amended 2012 Ky. Acts ch. 89, sec. 2, effective July 12, 2012. -- Amended 2006 Ky. Acts ch. 241, sec. 15, effective July 12, 2006.. -- Amended 2000 Ky. Acts ch. 104, sec. 11, effective July 14, 2000 -- Amended 1998 Ky. Acts ch. 481, sec. 1, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 308, sec. 12, effective April 9, 1996. -- Amended 1982 Ky. Acts ch. 370, sec. 4, effective July 15, 1982. -- Amended 1976 (1st Extra. Sess.) ch. 8, secs. 1-6 and 8-10. -- Amended 1976 Ky. Acts ch. 174, sec. 2. -- Amended 1974 Ky. Acts ch. 386, sec. 65. -- Amended 1972 Ky. Acts ch. 298, sec. 9. -- Amended 1952 Ky. Acts ch. 162, sec. 9, effective March 5, 1952. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 2737-1, 2739-38, 2739-44, 2739-45.

**Legislative Research Commission Note** (4/9/96). The action taken with respect to this statute by 1996 Ky. Acts ch. 308 was to have become effective April 8, 1996, under Section 51 of that Act. The Act, however, did not become effective until April 9, 1996, when the Governor's signed copy of the Act was filed with the Secretary of State.